

AMENDED IN ASSEMBLY MARCH 25, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2685**

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**Introduced by Assembly Member De La Torre**

February 19, 2010

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An act to amend Sections 1006, 35107, 44237, 44346.1, and 44424 of, and to add ~~Section 44021~~ *Sections 44021 and 47610.2* to, the Education Code, relating to schools, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2685, as amended, De La Torre. Schools: criminal background of employees and board members.

(1) Under existing law, any registered voter is eligible to be a member of the county board of education, except as specified. Existing law also authorizes any person who is 18 years of age or older, who is a resident of the school district, and who meets other specified requirements to be elected or appointed to the governing board of a school district.

This bill would require a person who is elected, appointed, or is otherwise selected to serve on those boards to successfully complete a criminal background check, as specified, prior to taking office. By imposing additional requirements on local educational agencies, the bill would impose a state-mandated local program.

(2) Existing law requires every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level to conduct a criminal background check with the Department of Justice for each applicant for employment in a position that requires contact with minor pupils, if the applicant is not

credentialed by the Commission on Teacher Credentialing or licensed by another state agency that requires a criminal background check.

This bill would require a private school to notify the Commission on Teacher Credentialing whenever an employee who comes in contact with minor pupils in the course of his or her employment is charged with the commission of any sex offense, as defined. ~~The bill would make a willful violation of those provisions a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program.~~

*The bill would require a person serving as an administrator of a charter school or as a member of the governing board of a charter school to successfully complete a criminal background check.*

The bill would require the commission, with the assistance of the Department of Justice, to establish and maintain a database of all persons who do not possess a valid credential issued by the commission, who are or were employed by a private school in a position requiring contact with minor pupils, and who have been arrested or convicted of a sex offense.

~~(3) Existing law requires the commission to deny any application for the issuance of a credential to an applicant who has been convicted of specified criminal offenses, and also requires the commission to revoke the credential of a holder who has been convicted of those offenses. Existing law also authorizes the commission to grant a credential to an applicant who has been convicted of a violent or serious felony if he or she obtains a certificate of rehabilitation and pardon pursuant to specified statutory provisions, and specifies that the commission is prohibited from revoking the credential of a holder solely on the basis that the applicant has been convicted of a violent or serious felony if he or she obtains a certificate of rehabilitation and pardon.~~

~~This bill would authorize, but not require, the commission to grant or revoke a credential of applicants and credentialholders who have been convicted of those offenses and specified other offenses, including willful harm or injury to a child, assault resulting in the death of a child under 8 years of age, and the detainment or concealment of a child from the legal custodian. The bill would also prohibit the commission from denying or revoking a credential solely on the basis that the applicant or credentialholder has been convicted for abducting his or her own child under specified statutory provisions.~~

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~This bill would exclude from those provisions credentialholders and applicants who have been convicted of specified criminal offenses.~~

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~(5) This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.~~

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1006 of the Education Code is amended  
2     to read:  
3     1006. (a) Any registered voter is eligible to be a member of  
4     the county board of education except the county superintendent  
5     of schools, any member of his staff, or any employee of a school  
6     district.  
7     (b) Notwithstanding any other provision of law, the county  
8     board of education may adopt or the residents of the county may  
9     propose, by initiative, a proposal to limit or repeal a limit on the  
10    number of terms a member of the county board of education may  
11    serve on the county board of education. Any proposal to limit the  
12    number of terms a member of the county board of education may  
13    serve on the county board of education shall apply prospectively  
14    only and shall not become operative unless it is submitted to the  
15    electors of the county at a regularly scheduled election and a  
16    majority of the votes cast on the question favor the adoption of the  
17    proposal.

(c) An initiative measure proposed pursuant to subdivision (b) shall be subject to the procedures set forth in Chapter 2 (commencing with Section 9100) of Division 9 of the Elections Code.

(d) Notwithstanding any other law, prior to taking office, a person elected, appointed, or otherwise selected to serve on a county board of education shall successfully complete a criminal background check in accordance with Section 45125 prior to taking office.

SEC. 2. Section 35107 of the Education Code is amended to read:

35107. (a) Any person, regardless of sex, who is 18 years of age or older, a citizen of the state, a resident of the school district, a registered voter, and who is not disqualified by the Constitution or laws of the state from holding a civil office, is eligible to be elected or appointed a member of a governing board of a school district without further qualifications.

(b) (1) An employee of a school district may not be sworn into office as an elected or appointed member of that school district's governing board unless and until he or she resigns as an employee. If the employee does not resign, the employment will automatically terminate upon being sworn into office.

(2) For any individual who is an employee of a school district and an elected or appointed member of that school district's governing board prior to January 1, 1992, this subdivision shall apply when he or she is reelected or reappointed, on or after January 1, 1992, as a member of the school district's governing board.

(c) Notwithstanding any other law, the governing board of a school district may adopt or the residents of the school district may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the governing board of the school district may serve on the governing board of the school district. Any proposal to limit the number of terms a member of the governing board of the school district may serve on the governing board of the school district shall apply prospectively only and shall not become operative unless it is submitted to the electors of the school district at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.

(d) (1) An initiative measure proposed pursuant to subdivision (c) shall be subject to the procedures set forth in Chapter 4 (commencing with Section 9300) of Division 9 of the Elections Code.

(2) A proposal submitted to the electors by the governing board pursuant to subdivision (c) shall be subject to the procedures set forth in Chapter 6 (commencing with Section 9500) of Division 9 of the Elections Code.

(e) A member of the governing board of a school district shall abstain from voting on personnel matters that uniquely affect a relative of the member but may vote on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. For purposes of this section, “relative” means an adult who is related to the person by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree.

(f) Notwithstanding any other law, a person elected, appointed, or otherwise selected to serve on a governing board of a school district shall successfully complete a criminal background check in accordance with Section 45125 prior to taking office.

SEC. 3. Section 44021 is added to the Education Code, to read:

44021. (a) A private school shall notify the Commission on Teacher Credentialing whenever an employee who comes in contact with minor pupils in the course of his or her employment is charged with the commission of any sex offense, as defined in Section 44010, no later than 10 days after being informed that the employee has been charged.

~~(b) Any principal, teacher, employee, or school officer of a private school who refuses or willfully neglects to notify the commission pursuant to subdivision (a) is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six months or by a fine not to exceed five thousand dollars (\$5,000), or by both that fine and imprisonment.~~

~~(c)~~

~~(b)~~ For purposes of this section, “private school” means any person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level.

SEC. 4. Section 44237 of the Education Code is amended to read:

1 44237. (a) Every person, firm, association, partnership, or  
2 corporation offering or conducting private school instruction on  
3 the elementary or high school level shall require each applicant  
4 for employment in a position requiring contact with minor pupils  
5 who does not possess a valid credential issued by the Commission  
6 on Teacher Credentialing or is not currently licensed by another  
7 state agency that requires a criminal record summary that directly  
8 relates to services provided in a facility described in this section  
9 and has background clearance criteria that meets or exceeds the  
10 requirements of this section, to submit two sets of fingerprints  
11 prepared for submittal by the employer to the Department of Justice  
12 for the purpose of obtaining criminal record summary information  
13 from the Department of Justice and the Federal Bureau of  
14 Investigation.

15 (b) (1) As used in this section, “employer” means every person,  
16 firm, association, partnership, or corporation offering or conducting  
17 private school instruction on the elementary or high school level.

18 (2) As use in this section, “employment” means the act of  
19 engaging the services of a person, who will have contact with  
20 pupils, to work in a position at a private school at the elementary  
21 or high school level on or after September 30, 1997, on a regular,  
22 paid full-time basis, regular, paid part-time basis or paid full- or  
23 part-time seasonal basis.

24 (3) As used in this section, “applicant” means any person who  
25 is seriously being considered for employment by an employer.

26 (4) This section does not apply to a secondary school pupil  
27 working at the school he or she attends or a parent or legal guardian  
28 working exclusively with his or her children.

29 (c) (1) Upon receiving the identification cards, the Department  
30 of Justice shall ascertain whether the applicant has been arrested  
31 or convicted of any crime insofar as that fact can be ascertained  
32 from information available to the department and forward the  
33 information to the employer submitting the fingerprints no more  
34 than 15 working days after receiving the identification cards. The  
35 Department of Justice shall not forward information regarding  
36 criminal proceedings that did not result in a conviction but shall  
37 forward information on arrests pending adjudication.

38 (2) Upon implementation of an electronic fingerprinting system  
39 with terminals located statewide and managed by the Department  
40 of Justice, the Department of Justice shall ascertain the information

1 required pursuant to this subdivision within three working days.  
2 If the Department of Justice cannot ascertain the information  
3 required pursuant to this subdivision within three working days,  
4 the department shall notify the employer submitting the fingerprints  
5 that it cannot so ascertain the required information. This  
6 notification shall be delivered by telephone or electronic mail to  
7 the employer submitting the fingerprints. If the employer  
8 submitting the fingerprints is notified by the Department of Justice  
9 that it cannot ascertain the required information about a person,  
10 the employer shall not employ that person until the Department  
11 of Justice ascertains that information.

12 (3) The Department of Justice shall review the criminal record  
13 summary it obtains from the Federal Bureau of Investigation to  
14 ascertain whether an applicant for employment has a conviction,  
15 or an arrest pending final adjudication, for any sex offense,  
16 controlled substance offense, crime of violence, or serious or  
17 violent felony. The Department of Justice shall provide written  
18 notification to the private school employer only as to whether an  
19 applicant for employment has any convictions, or arrests pending  
20 final adjudication, for any of these crimes.

21 (d) An employer shall not employ a person until the Department  
22 of Justice completes its check of the state criminal history file as  
23 set forth in this section.

24 (e) (1) A person, firm, association, partnership, or corporation  
25 offering or conducting private school instruction on the elementary  
26 or high school level shall not employ a person who has been  
27 convicted of a violent or serious felony or a person who would be  
28 prohibited from employment by a public school district pursuant  
29 to any provision of this code because of his or her conviction for  
30 any crime.

31 (2) A person who would be prohibited from employment by a  
32 private school pursuant to paragraph (1) shall not, on or after July  
33 1, 1999, own or operate a private school offering instruction on  
34 the elementary or high school level.

35 (f) An employer shall request subsequent arrest service from  
36 the Department of Justice as provided under Section 11105.2 of  
37 the Penal Code.

38 (g) This section applies to any violent or serious offense which,  
39 if committed in this state, would have been punishable as a violent  
40 or serious felony.

1 (h) For purposes of this section, a violent felony is any felony  
2 listed in subdivision (c) of Section 667.5 of the Penal Code and a  
3 serious felony is any felony listed in subdivision (c) of Section  
4 1192.7 of the Penal Code.

5 (i) Notwithstanding subdivision (e), a person shall not be denied  
6 employment or terminated from employment solely on the basis  
7 that the person has been convicted of a violent or serious felony  
8 if the person has obtained a certificate of rehabilitation and pardon  
9 pursuant to Chapter 3.5 (commencing with Section 4852.01) of  
10 Title 6 of Part 3 of the Penal Code.

11 (j) Notwithstanding subdivision (e), a person shall not be denied  
12 employment or terminated from employment solely on the basis  
13 that the person has been convicted of a serious felony that is not  
14 also a violent felony if that person can prove to the sentencing  
15 court of the offense in question, by clear and convincing evidence,  
16 that he or she has been rehabilitated for the purposes of school  
17 employment for at least one year. If the offense in question  
18 occurred outside this state, then the person may seek a finding of  
19 rehabilitation from the court in the county in which he or she is a  
20 resident.

21 (k) The Commission on Teacher Credentialing shall send on a  
22 monthly basis to each private school a list of all teachers who have  
23 had their state teaching credential revoked or suspended. The list  
24 shall be identical to the list compiled for public schools in the state.  
25 The commission shall also send on a quarterly basis a complete  
26 and updated list of all teachers who have had their teaching  
27 credentials revoked or suspended, excluding teachers who have  
28 had their credentials reinstated, or who are deceased.

29 (l) The Department of Justice may charge a reasonable fee to  
30 cover costs associated with the processing, reviewing, and  
31 supplying of the criminal record summary as required by this  
32 section. The fee shall not exceed the actual costs incurred by the  
33 department.

34 (m) Where reasonable access to the statewide, electronic  
35 fingerprinting network is available, the Department of Justice may  
36 mandate electronic submission of the fingerprints and related  
37 information required by this section.

38 (n) All information obtained from the Department of Justice is  
39 confidential. Agencies handling Department of Justice information  
40 shall ensure the following:



1 (1) A recipient shall not disclose its contents or provide copies  
2 of information.

3 (2) Information received shall be stored in a locked file separate  
4 from other files, and shall only be accessible to the custodian of  
5 records.

6 (3) Information received shall be destroyed upon the hiring  
7 determination in accordance with subdivision (a) of Section 708  
8 of Title 11 of the California Code of Regulations.

9 (4) Compliance with destruction, storage, dissemination,  
10 auditing, backgrounding, and training requirements as set forth in  
11 Sections 700 to 708, inclusive, of Title 11 of the California Code  
12 of Regulations and Section 11077 of Penal Code governing the  
13 use and security of criminal offender record information is the  
14 responsibility of the entity receiving the information from the  
15 Department of Justice.

16 (o) The Commission on Teacher Credentialing shall establish  
17 and maintain a database of all persons who do not possess a valid  
18 credential issued by the commission, who are or were employed  
19 by a private school in a position requiring contact with minor  
20 pupils, and who have been arrested or convicted of a sex offense,  
21 as defined in Section 44010. The database shall include, among  
22 other information, the name and address of the private school at  
23 which the person is or was employed. The Department of Justice  
24 shall assist the commission in establishing and maintaining the  
25 database.

26 SEC. 5. Section 44346.1 of the Education Code is amended to  
27 read:

28 44346.1. (a) The commission shall deny any application for  
29 the issuance of a credential made by an applicant who has been  
30 convicted of a violent or serious felony or a crime set forth in  
31 subdivision (a) of Section 44424 or whose employment has been  
32 denied or terminated pursuant to Section 44830.1.

33 (b) This section applies to any violent or serious offense which,  
34 if committed in this state, would have been punishable as a violent  
35 or serious felony.

36 (c) For purposes of this section, a violent felony is any felony  
37 listed in subdivision (c) of Section 667.5 of the Penal Code and a  
38 serious felony is any felony listed in subdivision (c) of Section  
39 1192.7 of the Penal Code.

(d) ~~(1)~~—Notwithstanding subdivision (a), the commission may, but is not required to, grant a credential to an applicant who has been convicted of a violent or serious felony ~~or, except for an~~ offense defined in Section 273a, 273ab, or 278 of the Penal Code, if the person is eligible for, and has obtained, a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

~~(2) Notwithstanding paragraph (1), the commission shall not deny a credential to an applicant solely on the basis that the applicant has been convicted under Section 278 of the Penal Code for abducting his or her own child.~~

SEC. 6. Section 44424 of the Education Code is amended to read:

44424. (a) Upon the conviction of the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing of a violation, or attempted violation, of a violent or serious felony as described in Section 44346.1, or any one or more of Penal Code Sections 187 to 191, inclusive, 192 insofar as this section relates to voluntary manslaughter, 193, 194 to 217.1, inclusive, 220, 222, 244, 245, 261 to 267, inclusive, 273a, 273ab, 273d, 273f, 273g, 278, 285 to 288a, inclusive, 424, 425, 484 to 488, inclusive, insofar as these sections relate to felony convictions, 503 and 504, or of any offense involving lewd and lascivious conduct under Section 272 of the Penal Code, or any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the offenses specified in this section, becoming final, the commission shall forthwith revoke the credential.

(b) Upon a plea of nolo contendere as a misdemeanor to one or more of the crimes set forth in subdivision (a), all credentials held by the respondent shall be suspended until a final disposition regarding those credentials is made by the commission. Any action that the commission is permitted to take following a conviction may be taken after the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

1 (c) The commission shall revoke a credential issued to a person  
2 whose employment has been denied or terminated pursuant to  
3 Section 44830.1.

4 (d) ~~(1)~~ Notwithstanding subdivision (a), the commission may,  
5 but is not required to, revoke the credential of a holder who has  
6 been convicted of a violent or serious felony ~~or, except for an~~  
7 offense defined in Section 273a, 273ab, or 278 of the Penal Code,  
8 if the person has obtained a certificate of rehabilitation and pardon  
9 pursuant to Chapter 3.5 (commencing with Section 4852.01) of  
10 Title 6 of Part 3 of the Penal Code.

11 ~~(2) Notwithstanding paragraph (1), the commission shall not~~  
12 ~~deny a credential to an applicant solely on the basis that the~~  
13 ~~applicant has been convicted under Section 278 of the Penal Code~~  
14 ~~for abducting his or her own child.~~

15 *SEC. 7. Section 47610.2 is added to the Education Code, to*  
16 *read:*

17 *47610.2. (a) Notwithstanding any other provision of law, a*  
18 *person serving as an administrator of a charter school or as a*  
19 *member of a governing body of a charter school shall successfully*  
20 *complete a background check in accordance with Section 45125.*

21 *(b) A person who is an administrator or a member of a*  
22 *governing body of a charter school at the time the statute enacting*  
23 *this section takes effect shall complete the background check within*  
24 *90 days from the date on which this section takes effect.*

25 ~~SEC. 7. No reimbursement is required by this act pursuant to~~  
26 ~~Section 6 of Article XIII B of the California Constitution for certain~~  
27 ~~costs that may be incurred by a local agency or school district~~  
28 ~~because, in that regard, this act creates a new crime or infraction,~~  
29 ~~eliminates a crime or infraction, or changes the penalty for a crime~~  
30 ~~or infraction, within the meaning of Section 17556 of the~~  
31 ~~Government Code, or changes the definition of a crime within the~~  
32 ~~meaning of Section 6 of Article XIII B of the California~~  
33 ~~Constitution.~~

34 ~~However, if the Commission on State Mandates determines that~~  
35 ~~this act contains other costs mandated by the state, reimbursement~~  
36 ~~to local agencies and school districts for those costs shall be made~~  
37 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
38 ~~4 of Title 2 of the Government Code.~~

39 *SEC. 8. If the Commission on State Mandates determines that*  
40 *this act contains costs mandated by the state, reimbursement to*

1 *local agencies and school districts for those costs shall be made*  
2 *pursuant to Part 7 (commencing with Section 17500) of Division*  
3 *4 of Title 2 of the Government Code.*

4 ~~SEC. 8.~~

5 SEC. 9. This act is an urgency statute necessary for the  
6 immediate preservation of the public peace, health, or safety within  
7 the meaning of Article IV of the Constitution and shall go into  
8 immediate effect. The facts constituting the necessity are:

9 In order to protect the health and safety of children attending  
10 private schools, it is necessary that this act take effect immediately.